

REMARKS

Presently, Claims 1-9 and 11-14 stand rejected. Claims 1 and 9 have been amended. Claim 10 has been cancelled. Claims 1-9 and 12-14 are presently pending in the application. Favorable reconsideration of the application is respectfully requested.

Rejection Under 35 U.S.C. § 102(b) over Rigby et al.:

In section 3 of the Final Office Action dated May 28, 2009, the Examiner has rejected claims 1, 9 and 12 under 35 U.S.C. §102(b) as being anticipated by Rigby et al. (U.S. Patent 2,445,366). In light of this amendment, it is respectfully requested that this rejection be reconsidered and withdrawn.

The instant claims recite the limitation of a solution having a pH between 6.0 and 8.0. By contrast, Rigby et al. teaches a solution having a pH far below the claimed range. For example, in Column 2, Lines 7-8 of Rigby et al., the ointment is disclosed as having a pH of about 4.5. Furthermore, example 1 of Rigby et al. teaches a solution having a pH of 3.95. Even further, Column 4, Lines 17-20 of Rigby et al. discloses that it is important to keep the pH below 5.5 as pH levels above this range are less stable. The instant claims require a pH range above the suitable range as taught by Rigby et al. As the instant claims recite a pH range above that disclosed by Rigby et al., it is respectfully urged that the instant claims are novel in view of the cited reference.

Rejection Under 35 U.S.C. § 103(a) over Mowrey-McKee et al. in view of Evans:

In section 4 of the Final Office Action dated May 28, 2009, the Examiner has rejected claims 1-4, 7-9 and 11-14 under 35 U.S.C. § 103(a) as being unpatentable over Mowrey-McKee et al. (U.S. Patent 5,817,277) in view of British Patent Specification Publication GB 1,431,841 (hereinafter “Evans”). The Examiner indicates that Evans teaches a variety of vitamins to be included in the amount ranging from 0.5-20 milligrams. As Evans fails to teach or suggest a solution having between 0.001 to 10 weight percent of the claimed preservative enhancers, it is respectfully urged that this rejection is in error.

Evans fails to indicate that the B vitamin concentration should be adjusted. The Examiner indicates that Evans discloses that the quantities of vitamins, including

the B vitamins, may be adjusted according to the disorder being treated. Applicant kindly directs the Examiner's attention to page 2, lines 10-14 indicating that a multiple of the basic disclosed formula may be utilized. Evans indicates that the basic formula may be multiplied to increase the dosage but while keeping the general proportion of concentrations the same. This is further evidenced on page 2, lines 76-99 wherein Evans indicates that the concentrations vitamin A, vitamin E, vitamin C, calcium and niacin may be increased to specified amounts, but that "the remaining ingredients should however remain substantially as stated." Evans teaches the importance of retaining the specific concentration of B vitamins disclosed. On page 1, lines 63-79 Evans indicates that it is essential that B vitamins be given in relative proportions disclosed by the specific formula on page 2. Therefore, it is respectfully urged that Evans has been misconstrued and that this rejection be reconsidered and withdrawn.

Rejection Under 35 U.S.C. § 103(a) over Mowrey-McKee et al. in view of Evans and further in view of De Bruiju et al.:

In section 5 of the Final Office Action dated May 28, 2009, the Examiner has rejected claims 5 and 6 under 35 U.S.C. § 103(a) as being unpatentable over Mowrey-McKee et al. as modified by Evans and further in view of De Bruiju et al. (U.S. Patent 6,162,393). As discussed above, Evans has been misconstrued and does not teach the claimed concentration of preservative enhancers. Therefore, it is respectfully requested that this rejection be reconsidered and withdrawn.

Double Patenting:

In Section 6 of the Final Office Action dated May 28, 2009, the Examiner has provisionally rejected claim 10 under 35 U.S.C. § 101 as claiming the same invention as that of claim 11 of copending Application No. 11/620,318. In Section 7 of the Final Office Action dated March 28, 2009, the Examiner has further provisionally rejected claims 1-11 under 35 U.S.C. § 101 as claiming the same invention as that of claims 1-14 of copending Application No. 11/620,318. As these are provisional rejections, Applicant will consider filing a terminal disclaimer upon the indication of allowable claims or the "provisional" double patenting rejection is the only rejection remaining in this or at least one of the above listed applications.

Conclusion:

It is believed that the foregoing is a complete response and that the claims are in condition for allowance. Applicant requests that a timely Notice of Allowance be issued in this case.

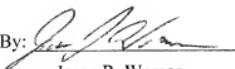
Applicant appreciates the opportunity to call the Examiner but believes that this amendment to the claims and the forgoing remarks fully address the issues raised by the Examiner. On the other hand, the Examiner is invited to call the undersigned attorney if he has any matters to address that will facilitate allowance of the application.

In the event that Applicant has overlooked the need for an extension of time, additional extension of time, payment of fee, or additional payment of fee, Applicant hereby conditionally petitions therefore and authorizes that any changes be made to Deposit Account No.: 50-3010.

Respectfully submitted,

HISCOCK & BARCLAY, LLP

By:



Jason R. Womer
Reg. No. 60,149
2000 HSBC Plaza
100 Chestnut Street
Rochester, NY 14604
Tel: (585) 295-4400 x-4306
Fax: (585) 295-8431